

Don Springmeyer (NSBN 1021)
 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
 RABKIN, LLP
 3556 East Russell Road, Second Floor
 Las Vegas, NV 89120
 Telephone: (702) 341-5200
 Facsimile: (702) 341-5300
 E-mail: DSpringmeyer@wrslawyers.com

Proposed Liaison Counsel
[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

ELLIOTT GREENBERG, Individually
 and On Behalf of All Others Similarly
 Situated,

Plaintiff,

v.

A-POWER ENERGY GENERATION
 SYSTEMS, LTD., JINXIANG LU and
 KIN KWONG MAK

Defendants.

No. 3:11-cv-00472-RCJ-RAM

CLASS ACTION

**RICHARD LEVINSON'S MOTION
 FOR CONSOLIDATION, FOR
 APPOINTMENT AS LEAD
 PLAINTIFF AND FOR APPROVAL
 OF LEAD PLAINTIFF'S
 SELECTION OF LEAD COUNSEL**

RAJNISH GUPTA, Individually and
 On Behalf of All Others Similarly
 Situated,

Plaintiff,

v.

A-POWER ENERGY GENERATION
 SYSTEMS, LTD., LTD., A-POWER
 ENERGY GENERATION SYSTEMS,
 USA, LTD., JINXIANG LU and KIN
 KWONG MAK

Defendants.

No. 3:11-cv-00577-RCJ-VPC

I. INTRODUCTION

Richard Levinson (“Movant”) suffered substantial losses as a result of his investment in the common stock of A-Power Energy Generation Systems, Ltd. (“A-Power”) from March 31, 2008 through June 27, 2011 (the “Class Period”) and he alleges that these losses were caused by Defendants’ violations of the Exchange Act. He now respectfully moves (1) for the consolidation of the above-captioned cases; (2) to be appointed lead plaintiff pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act (“PSLRA”); and (3) for approval of his selection of the law firms of Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”) as lead counsel for the class and Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP (“Wolf, Rifkin”) as liaison counsel.

Pursuant to the PSLRA, after consolidation of related cases the Court is to appoint as lead plaintiff from among those seeking such appointment who otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, the movant or group of movants with the largest financial interest in the litigation. *See* 15 U.S.C. § 78u-4(a)(3)(B).

The PSLRA establishes a three-step procedure for the selection of lead plaintiffs to oversee class actions brought under the Exchange Act. *In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002). First, the PSLRA provides that within 20 days after the date on which a securities fraud class action is filed, the initial plaintiff is required to publish a notice advising potential plaintiff class members of the pendency of the action, the claims, the purported class period, and that any member of the class may file a motion with the Court to serve as lead plaintiff no later than 60 days from the publication of that original notice. 15 U.S.C. § 78u-4(a)(3)(A)(ii). Notice of the first class action filed against A-Power

1 was timely published. *See* Declaration of Matthew B. Kaplan (“Kaplan Decl.”),
2 Ex. A.

3 Next, the PSLRA instructs the Court to appoint the “most adequate
4 plaintiff” to serve as lead plaintiff for the class. The PSLRA provides that the
5 Court shall presume to be the lead plaintiff the person or persons who: (1) have
6 either filed a complaint or moved for lead plaintiff in response to a notice; (2)
7 “ha[ve] the largest financial interest in the relief sought”; and (3) satisfy the
8 typicality and adequacy requirements of Fed. R. Civ. P. 23. 15 U.S.C. § 78u-
9 4(a)(3)(B)(iii)(I). Typicality and adequacy of representation are the only
10 provisions relevant to the determination of lead plaintiff under the PSLRA. *In re*
11 *Crayfish Co. Sec. Litig.*, No. 00 Civ. 6766 (DAB), 2002 WL 1268013, at *4
12 (S.D.N.Y. June 6, 2002) (citing *In re Olsten Corp. Sec. Litig.*, 3 F. Supp. 2d 286,
13 296 (E.D.N.Y. 1998) and *Weltz v. Lee*, 199 F.R.D. 129, 133 (S.D.N.Y. 2001)).

14 Finally, after the presumptive lead plaintiff has been identified, other class
15 members have “an opportunity to rebut the presumptive lead plaintiff’s showing
16 that it satisfies Rule 23’s typicality and adequacy requirements.” *Cavanaugh*, 306
17 F. 3d at 730.

18 For the reasons set forth below, Movant is the “most adequate plaintiff”
19 under the PSLRA who has moved to serve as lead plaintiff in this action. Movant
20 alleges that he has the largest financial interest in the relief sought by this action
21 by virtue of his losses of approximately \$380,000 from his purchases of shares in
22 the securities which are the subject of this action. Movant further satisfies the
23 relevant requirements of Rule 23 as an adequate class representative with claims
24 typical of the other purchasers of the securities at issue in the action.
25 Additionally, Movant’s selection of Cohen Milstein as lead counsel should be
26 approved because Movant, as the presumptive lead plaintiff, has selected highly
27 qualified counsel. Cohen Milstein has extensive experience in the prosecution of

1 securities class actions and will adequately represent the interests of all class
2 members as lead counsel.

3 II. BACKGROUND

4 A-Power is engaged in, among other things, providing onsite distributed
5 power generation systems and micro power grids for industrial companies. The
6 complaints in these actions allege that, during the class period, the Defendants
7 made false and misleading statements about A-Power's financial health. When
8 information about A-Power's true financial condition became known to the
9 market the Company's stock price dropped substantially and trading in A-
10 Power's stock was eventually halted by NASDAQ.

11 The first securities class action relating to these facts, *Cheng v. A-Power*
12 *Energy Generation Systems Ltd.*, No. 11-CV-5509, was filed against A-Power
13 and certain of its officers and subsidiaries on July 1, 2011 in the U.S. District
14 Court for the Central District of California. Subsequently one additional class
15 action based on these facts, *Arar v. A-Power Energy Generation Systems Ltd.*,
16 No. 11-CV-5649, was also filed in that court. Subsequent to the filing of the
17 *Cheng* action in the Central District of California the same law firm filed the two
18 above-captioned similar cases in this Court. Another similar case, *Weinberg v. A-*
19 *Power Energy Generation Systems Ltd.*, No. 11-CV-6006, has been filed in the
20 Southern District of New York. Except for the two Nevada cases – *Greenberg*
21 *and Gupta* -- the class period alleged in all the filed complaints (and the class
22 period announced in the initial public notice to the class) is March 31, 2008
23 through June 27, 2011. The class period for the complaints filed in this Court is
24 shorter—from August 27, 2009 through June 27, 2011.

25 III. ARGUMENT

26 A. These Cases Should Be Consolidated

27 The PSLRA provides that within 90 days after the publication of the

1 required notice of pendency, or as soon as practicable after the actions have been
2 consolidated, the Court shall consider any motion made by a class member and
3 “shall appoint as lead plaintiff the member or members of the purported plaintiff
4 class that the court determines to be most capable of adequately representing the
5 interests of class members.” 15 U.S.C. § 78u-4(a)(3)(B)(i).

6 Class action shareholder suits are ideally suited for consolidation pursuant
7 to Rule 42(a). *See Wertz*, 199 F.R.D. at 131. “[I]n securities actions where the
8 complaints are based on the same public statements and reports, consolidation is
9 appropriate if there are common questions of law and fact and the parties will not
10 be prejudiced.” *Id.* (internal quotations and citation omitted).

11 These cases present virtually identical factual and legal issues and allege
12 similar violations of the federal securities laws. They involve substantially the
13 same parties and arise from the same underlying facts and circumstances. “The
14 proper solution to problems created by the existence of two or more cases
15 involving the same parties and issues, simultaneously pending in the same court
16 would be to consolidate them under Rule 42(a).” *Hargett v. Valley Fed. Sav.*
17 *Bank*, 60 F.3d 754, 765-66 (11th Cir. 1995) (quoting *Miller v. United States*
18 *Postal Serv.*, 729 F.2d 1033, 1036 (5th Cir. 1995)); *see also Investors Research*
19 *Co. v. U.S. Dist. Court for Cent. Dist. of California*, 877 F.2d 777, 777 (9th Cir.
20 1989) (“The district court has broad discretion under this rule to consolidate cases
21 pending in the same district.”). Because these actions are based on the same facts
22 and involve the same subject matter, discovery obtained in one lawsuit will
23 undoubtedly be relevant to all others. Consolidation of these related actions is
24 thus appropriate as common questions of law and fact predominate in these
25 actions. Fed. R. Civ. P. 42(a).

B. Movant Should Be Appointed as Lead Plaintiff in the Action

1. Movant's Motion Is Timely

In compliance with the PSLRA, Movant has timely moved for appointment as lead plaintiff, within 60 days of the publication of the PSLRA notice. 15 U.S.C. § 78u-4.

2. Movant Believes That He Possesses the Largest Financial Stake in the Relief Sought by the Class

The PSLRA provides that courts:

[S]hall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this paragraph referred to as the "most adequate plaintiff") in accordance with this subparagraph.

15 U.S.C. § 78u-4(a)(3)(B)(i). The PSLRA requires this Court to adopt a rebuttable presumption that the most adequate plaintiff in any private action arising under the Exchange Act is the person or group of persons that has "the largest financial interest in the relief sought by the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I) (bb). Congress reasoned that increasing the role of investors with a large financial stake in the outcome of the litigation would be beneficial because such investors are more apt to effectively manage complex securities litigation. *See* H.R. Conference Report on the Private Securities Litigation Reform Act of 1995, H.R. Rep. No. 104-369, 104th Cong. 1st Session, at 34 (1995), *reprinted* in 1995 U.S.C.C.A.N. 730, 730-34 ("[C]lass members with large amounts at stake will represent the interests of the plaintiff class more effectively than class members with small amounts at stake.").

Movant, who has suffered losses of approximately \$380,000 as a result of his purchases of A-Power stock during the Class Period, has a large amount at stake in the outcome of this litigation. *See* Kaplan Decl., Ex. B (Certification of

1 Plaintiff) & Ex. C (calculation of Movant's losses).¹ Movant respectfully
 2 submits that the original proposed dates for the class period (March 31, 2008
 3 through June 27, 2011) should be used in calculating losses because, if Plaintiffs'
 4 allegations are proven, the expanded class period will offer the prospect of a
 5 recovery to many more persons who were likely injured by Defendants' conduct.
 6 *See, e.g., In re Doral Fin. Corp. Sec. Litig.*, 414 F. Supp. 2d 398, 402 (S.D.N.Y.
 7 2006) ("For the purpose of determining lead plaintiff, I find that the use of the
 8 longer, most inclusive class period ... is proper"). Moreover, the original, longer
 9 class period was the period announced to investors in the initial notice to the
 10 class. *See In re Pfizer Inc. Sec. Litig.*, 233 F.R.D. 334, 337 (S.D.N.Y. 2005) (in
 11 determining movant with greatest loss court should look to class period set out in
 12 PSLRA notice to the proposed class); *see also* Kaplan Decl. Ex. A.

13 3. Movant Is Otherwise Qualified Under Rule 23

14 The PSLRA provides that, at the outset of the litigation, lead plaintiffs must
 15 also "otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil
 16 Procedure." 15 U.S.C. § 78u-4(a)(3)(B)(iii) (I)(cc). With respect to the
 17 qualifications of the class representative, Rule 23(a) requires generally that the
 18 plaintiff's claims be typical of the claims of the class and that the representative
 19 fairly and adequately protect the interests of the class. As detailed below, Movant
 20 satisfies the typicality and adequacy requirements of Rule 23(a) and is qualified
 21 to be appointed as lead plaintiff here.

22 The typicality requirement of Rule 23(a)(3) is satisfied when the
 23 representative plaintiffs have (1) suffered the same injuries as the absent class
 24 members, (2) as a result of the same course of conduct by defendants, and (3)
 25 their claims are based on the same legal issues. *Hanon v. Dataproducts Corp.*,

26 ¹ Movant's loss calculation is based on the reasonable assumption that the value of A-Power
 27 shares, whose trading has been suspended, is zero. As page 2 of Exhibit C indicates, if A-
 28 Power shares are valued at their trading price of \$1.67 at the time trading was suspended,
 Movant's losses total \$313,418.93.

1 976 F. 2d 497, 508 (9th Cir. 1992). The Ninth Circuit has held that Rule 23(a)(3)
 2 should be interpreted somewhat permissively and that “representative claims are
 3 ‘typical’ if they are reasonably co-extensive with those of absent class members;
 4 they need not be substantially identical.” *Hanlon v. Chrysler Corp.*, 150 F.3d
 5 1011, 1020 (9th Cir. 1997)).

6 Here, the questions of law and fact common to the members of the class
 7 that predominate over questions that may affect individual class members include
 8 the following:

- 9 (i) whether the Exchange Act was violated by Defendants;
- 10 (ii) whether Defendants made false statements and/or
 11 omissions;
- 12 (iii) whether Defendants’ statements were made with the
 13 requisite scienter; and
- 14 (iv) whether the members of the class have sustained
 15 damages and, if so, what is the proper measure of damages.

16 As a result, there is a well-defined community of interest in the questions
 17 of law and fact involved in this case. The claims asserted by Movant are typical
 18 of the claims of the members of the proposed class. Because Movant’s claims are
 19 based on the same legal theories and arise “‘from the same event or practice or
 20 course of conduct that gives rise to the claims of other class members,’” typicality
 21 is satisfied. *Roshandel v. Chertoff*, 554 F. Supp. 2d 1194, 1204 (W.D. Wash.
 22 2008) (citation omitted).

23 The adequacy of representation requirement of Rule 23(a)(4) is satisfied
 24 where it is established that a representative party “will fairly and adequately
 25 protect the interests of the class.” Fed. R. Civ. P. 23(a)(4); *Hanlon*, 150 F.3d at
 26 1020. In order to satisfy this requirement, a prospective lead plaintiff must show
 27 that he, she or it does not have any conflicts of interest with other class members

1 and that the plaintiff and counsel will vigorously prosecute the case. *Buus v.*
 2 *WaMu Pension Plan*, 251 F.R.D. 578 (W.D. Wash. 2008).

3 Here, Movant will more than adequately represent and protect the interests
 4 of the class. First, his interests are clearly aligned with the members of the
 5 proposed class and there is no evidence of any antagonism between his interests
 6 and the interests of the proposed class members. Second, as detailed above, he
 7 shares substantially similar questions of law and fact with the members of the
 8 proposed class and his claims are typical of the members of the class. Third,
 9 Movant has demonstrated that he will adequately serve as class representative by
 10 signing a sworn certification affirming his willingness to serve as, and assume the
 11 responsibilities of, a class representative. *See Kaplan Decl.*, Ex. B. Finally,
 12 Movant has retained and selected Cohen Milstein, a firm that is highly
 13 experienced in prosecuting securities class actions, to vigorously prosecute this
 14 action on behalf of the class. Therefore, Movant satisfies the requirements of
 15 Rule 23 and all of the PSLRA's prerequisites for appointment as lead plaintiff in
 16 this action and should be appointed as such pursuant to 15 U.S.C. § 78u-
 17 4(a)(3)(B).

18 **C. The Court Should Approve Movant's Choice of Counsel**

19 The PSLRA vests authority in the lead plaintiff to select and retain lead
 20 counsel, subject to this Court's approval. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v);
 21 *Cavanaugh*, 306 F.3d at 734-35. As such, this Court should not disturb the lead
 22 plaintiff's choice of counsel unless necessary to "protect the interests of the
 23 class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa). Here, Movant has selected the
 24 law firm of Cohen Milstein to represent the class. Cohen Milstein has
 25 successfully prosecuted numerous securities class actions on behalf of injured
 26 investors, as is set out in the firm's resume. *See Kaplan Decl.*, Ex. D. In
 27 addition, Movant has selected the law firm of Wolf, Rifkin to serve as liaison

1 counsel for the class. This firm will work cooperatively and diligently with lead
2 counsel to achieve the best and most equitable result for the class.

3 IV. CONCLUSION

4 For all the foregoing reasons, Movant respectfully requests that the Court:
5 (i) consolidate the above-captioned cases; (ii) appoint him as lead plaintiff in the
6 action pursuant to Section 21D(a)(3)(B) of the Exchange Act, as amended by the
7 PSLRA; and (iii) approve his selection of the law firms of Cohen Milstein to
8 serve as lead counsel and Wolf, Rifkin to serve as liaison counsel pursuant to 15
9 U.S.C. § 78u-4(a)(3)(B)(v).

10 Dated: August 30, 2011

Respectfully submitted,

11
12 **WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**

13 By: s/ Don Springmeyer
14 Don Springmeyer
15 Wolf, Rifkin, Shapiro, Schulman &
16 Rabkin, LLP
17 3556 E. Russell Road, Second Floor
18 Las Vegas, NV 89120
19 (702) 341-5200
20 (702) 341-5300 Fax

Proposed Liaison Counsel

21 Steven J. Toll
22 Daniel S. Sommers
23 Matthew B. Kaplan
24 **COHEN MILSTEIN SELLERS &
TOLL PLLC**
25 1100 New York Avenue, N.W.
26 Suite 500, West Tower
27 Washington, D.C. 20005
28 Tel.: (202) 408-4600
Fax: (202) 408-4699

*Counsel for Plaintiff and Proposed
Counsel for the Class*

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2011, a true and correct copy of **RICHARD LEVINSON'S MOTION FOR CONSOLIDATION FOR APPOINTMENT AS LEAD PLAINTIFF AND FOR APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL** was served via the United States District Court CM/ECF system on all parties or persons requiring notice.

By /s/ Christie Rehfeld
Christie Rehfeld, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP